IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2895 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL NARAN DUDA

Appearance:

Mr Samir Dave, AGP for Petitioners

Mr K L Dave for respondent

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 09/02/2001

C A V. JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

This is an appeal under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act'), challenging the common judgment and award dated 25.11.1998 recorded by the learned Joint District Judge, Junagadh in Land Reference Case No.577/88. In fact, the learned Judge has disposed of a group of Land Reference Cases being No. 538 to 594 of 1988 along with 350/88 & 351/88. This matter has been separated for the purpose of this appeal since it involves the question of limitation.

2. The facts may be briefly stated as follows:

The land in question belonging to the respondent above named was required for the public purpose namely; Machhundari Irrigation Scheme. Therefore, the Land Acquisition Officer undertook the required process by issuing notification under section 4(1) of the Act, which was published in the Government Gazette. The Land Acquisition Officer has undertaken necessary process and at the completion of the process, an award was made in the aforesaid matter in LAC. No.47/86 on 25.2.1988. It appears from the record that the respondent was served with notice under section 12(2) of the Act. The respondent-above named felt dissatisfied by the aforesaid award of the Land Acquisition Officer and had filed application under section 18 of the Act on 11.7.1988 requiring the Land Acquisition officer to refer the said application to the District Court. Accordingly the application was referred to the District Court, Junagadh. It appears that the Land Acquisition Officer has granted compensation in terms of the said award. The respondent felt that the compensation awarded was too low and therefore, the aforesaid application was submitted by him for referring the matter to the District Court under Section 18 of the Act. As said above, the Collector referred the matter to the District Court and the matter was registered as Land Reference Case No.577/88.

3. Notice was issued to the present appellants. They appeared before the Reference Court and filed objections-cum-written statement. There, they contended that the compensation awarded is just and adequate and, therefore, there is no need to increase the amount of compensation. They also contended that the present respondent was served with notice under section 12(2) of the Act and the respondent did not file the application for reference under Section 18 of the Act to the Collector within six weeks from the date of receipt of notice. The appellants contended that the references were otherwise also time barred and, therefore, they

could not be entertained. Necessary issues were framed by the learned Judge at Exh.8. After recording evidence and considering the evidence and arguments before the him, the learned Judge found that the compensation awarded by the Land Acquisition Officer was on lower side and, therefore, the learned Judge passed judgment and award holding that the respondent was entitled to higher amount of compensation as indicated in his judgment and award. At the same time, the learned Judge also found that the reference was filed within limitation and, therefore, he negatived the said contention of the appellants.

4. Feeling aggrieved by the said judgment and award of the learned trial Judge, the appellants abovenamed have preferred this appeal before this Court under Section 54 of the Act read with section 96 of the Code of Civil Procedure, 1908. It has been mainly contended here that the learned Judge has erred in holding that the references were filed within limitation. That the learned Judge has also erred in holding that the compensation awarded is on lower side. That the learned Judge has erred in enhancing the amount of compensation. That on the whole the judgment and award of the Reference Court are illegal and erroneous and deserve to be quashed and set aside. The appellants, have, therefore, prayed that the present appeal be allowed, the impugned judgment and award of the Reference Court be set aside and that the application for reference filed by the respondent be dismissed with costs all throughout.

5. At the admission stage, notice was issued to the other side. Mr K L Dave, learned Advocate appeared on behalf of the respondent whereas Mr Samir Dave, learned AGP appeared for the appellants. we have heard the learned Advocates for the parties and we have been taken through the Records and Proceedings including oral evidence as well as documentary evidence by both the learned Advocates. During the course of arguments, it was found that there was substance and force in the argument of the appellants that the reference was time barred and, therefore, they restricted their arguments to the point of limitation and that was the only issue argued by them before us. In view of the aforesaid position, we do not touch the merits of the case and should restrict the decision only on the point of limitation. Since the learned Advocates for the parties have restricted their arguments only on the issue of limitation and since they did not address us on other aspects of the case and since the learned Advocates requested us to restrict our findings only on the issue

of limitation, we restrict our findings and decision only on the point of limitation.

6. On appreciation of evidence and arguments, we are of the decision that the application for reference was time barred considering the provisions of section 18 read with section 12(2) of the Act and therefore, we find that the learned Judge has seriously erred in holding that the application for reference was filed within limitation. Reasons for the aforesaid finding are as follows:

7. A perusal of the reference application submitted by the respondent, it is apparently clear that this reference application was filed by the respondent before the Collector on 11.7.1988. This date has been indicated in the application itself by the learned Advocate for the respondent appearing before the Reference Court. There he has positively stated that the respondent has received notice under section 12(2) of the Act. It is true that the date of receipt of notice has not been indicated but the fact of receipt of notice under section 12(2) of the Act, has been admitted positively by the respondent in para 2 of the said application. There was no dispute between the parties on the aforesaid aspect of the case before us.

8. As said above, the appellants have taken up the contention about the limitation. There is an issue about the limitation raised by the Reference Court, and there is no dispute between the parties regarding the same. This would show that there was pleading having contention of limitation. Then there was an issue relating to limitation framed by the reference court. The parties were aware of the position. Admittedly, the Reference Court has recorded finding to the effect that the reference was within limitation.

9. We can find that along with the forwarding letter, the Collector had sent certain other information to the District Court, along with the application of the respondent under section 18 of the Act, for referring the matter to the District Court. There, we find the information at page 27 onwards which shows that the notice under section 12(2) of the Act was sent on 18.3.1988 and it was served on 21.3.1988 on the respondent. This document was not in dispute before us when M/s. Dave and Dave, learned Advocates argued the matter before us on the issue of limitation. This would positively show that the notice under section 12(2) was admittedly served upon the respondent on 21.3.1988. It is an admitted position that the respondent had submitted

his application for referring the matter under section 18 of the Act on 11.7.1988. Section 18 of the Act clearly states that when the notice has been served under section 12(2) of the Act then the application for reference is required tobe submitted before the Collector within six weeks from the date of receipt of notice under section 12(2) of the Act. It would be worthwhile to refer and reproduce the said provision of section 12(2) as well as provisions of Section 18 of the Act as follows:

"12(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

"18. Reference to Court - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken,

Provided that every such application shall be made,

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

10. A bare reading of the text of section 12(2) read with section 18 of the Act makes it clear that the application for reference is required to be filed within six weeks from the date of receipt of notice under section 12(2). As said above, the notice was admittedly served upon the respondent on 21.3.1988 but the respondent has admittedly submitted application for

reference on 11.7.1988. This would clearly show that the reference application has been filed beyond the period of limitation of six weeks from the date of receipt of notice under section 12(2). In fact, this application was required tobe submitted within six weeks, i.e. on or before 4.5.1988, but it has been submitted 11.7.1988. This clearly shows that this application was time barred and the Collector should not have referred the matter to the District Court.

11. On going through the judgment and award of the learned Judge, it seems that the finding has been given on the issue of limitation in favor of the respondent, but there appears to be no discussion on the issue as such.

11.1. However, there was evidence before the learned trial Judge to show that this application was made late and beyond the period of six weeks from the date of receipt of notice under section 12(2) of the Act. Therefore, the application under Section 18 of the Act was clearly time barred.

11.2. For this purpose, we can also refer to other evidence on record. Firstly, there is evidence at page 39 which shows that notice under section 12(2) of the Act was issued on 18.3.1988 and it was served on the respondent on 21.3.1988. This document was shown to us jointly by the learned Advocates for the parties. Both of them have agreed to consider the same. Both of them have relied upon the same and, therefore, once this document is relied upon, then it is evident that notice under section 12(2) was served upon the respondent on 21.3.1988 and in that case, the respondent was required to submit application for reference under Section 18 of the Act within six weeks therefrom. It has not been done and, therefore, the application for reference was clearly time barred.

12. Another aspect of the case is that there is also evidence to show that notice issued under section 12(2) of the Act was in fact issued to and served upon the respondent on the aforesaid date. Exhibit 21 is the document to show that the notice under Section 12(2) of the Act was issued to and served upon the respondent on the aforesaid date. It bears signature of one Kanubhai Naranbhai on behalf of the respondent. He seems to be the son of the respondent. This document was also admitted and was relied upon. It was shown to us by the learned Advocates for the parties. It would be seen that this document was produced with list at Exh.10 before the

learned trial Judge and the learned Advocate for the present respondent has consented for the exhibition of the said document. This shows that the document was admitted in evidence with the consent of the parties. Therefore, it is not open to the respondent to dispute the contents thereof. It is not the argument before us that the contents of this document were not properly proved in accordance with the rule of Evidence Act, or that, this document has been admitted in evidence with consent of parties. Even before us the document has not been disputed by the learned Advocates for the parties. This shows that there is further evidence to show that notice under section 12(2) of the Act was issued to and served upon to the present respondent on the aforesaid date. It is not the case of the respondent that Kanubhai Naranbhai was not a member of his family and was not authorized to receive the notice. On the other hand, this notice was shown to us jointly by the learned Advocates for the parties and both of them relied upon the same. It is moreso, when the document has been admitted in evidence with the consent of the respondent. Therefore, it has to be relied upon without any point of objection.

13. If we turn to the evidence of Mr Bhupatlal at Exh.31 before the trial court, there the witness has positively stated that the notice under section 12(2) of the Act was served on 2.3.1988 (sic.21.3.88) This witness was cross-examined by the learned Advocate for the respondent before the Reference Court but there was no question put to him with respect to the aforesaid fact of the date of service of notice under Section 12(2) of the Act during the course of cross-examination of the witness by the learned Advocate for the respondent. This means that the statement of fact made by the witness as aforesaid, was not challenged during the course of cross-examination on behalf of the respondent. Therefore, there is no reason to disbelieve the said statement of fact made by the witness on oath before the court as aforesaid. It is moreso, when the said fact is amply supported by the aforesaid evidence on record referred to hereinabove, which positively shows that respondent was served with notice under section 12(2) of the Act on 21.3.1988. Therefore, the appellant has positively proved by leading appropriate evidence before the trial court that the respondent was duly served with notice under section 12(2) of the Act on 21.3.1988.

14. As said above, a bare reading of section 18 of the Act read with section 12(2) of the Act makes it clear

that the application for reference under section 18 of the Act is required to be filed within six weeks from the date of receipt of notice under section 12(2) of the Act. Since this has not been done, the application for reference is apparently and ultimately time barred, since the application for reference has been made before the Collector on 11.7.1988.

15. There cannot be any dispute that there is no provision in law enabling the Collector to condone the delay. The application was received by the Collector and it was forwarded to the District Court and even the District Court has also no power or jurisdiction to condone the delay. Even the District Court has also not condoned the delay. So, the fact remains that the application was time barred and the delay could not be and has not been condoned by any authority. Therefore, the court below had absolutely no power or jurisdiction to entertain the time barred reference before it which was filed beyond the period of limitation. It is very clear that the application for reference was required to be made under section 18 of the Act within six weeks from the date of receipt of notice under section 12(2) of the Act. The said notice was served upon the respondent on 21.3.1988. The application for reference was made on 11.7.1988. Therefore, it was not submitted within six weeks from the date of receipt of notice under section 12(2) of the Act and, therefore, the application for reference was apparently time barred.

16. On the aforesaid set of evidence M/s. Dave and Dave, learned Advocates have agreed to the position that the reference application has not been filed in this matter within the period of limitation. On the aforesaid oral and documentary evidence on record, M/s.Dave and Dave, learned Advocates for both the sides agreed, consented and conceded that the reference application was time barred and there was no dispute about the same and therefore, they did not press the issue of the merit of the case with respect to the quantum of amount of compensation. As said above, time barred reference could not be entertained by the District Court. Neither the District Court nor the Collector had power or jurisdiction or authority to condone the delay nor they have condoned the delay. In this view of the matter, we are of the considered decision that the application was time barred. As said above, the Reference Court has observed that there was no evidence to prove the date of service of notice under section 12(2) of the Act but while observing as aforesaid, the Reference court has

clearly erred in not taking into consideration the aforesaid evidence at page 39, Exhs. 21 and 31, showing the date of service of notices under section 12(2). Therefore, the appellants are right in arguing that the application was time barred and it could not be entertained by the learned Judge of the Reference Court. We are in full agreement with the arguments advanced on behalf of the appellant by Mr Samir Dave, learned AGP. On the aforesaid aspects of the case we hold that the reference was time barred and it could not be entertained by the reference court. As said above, Mr K L Dave, learned Advocate on behalf of the respondent also consented, conceded and agreed that the reference application was time barred and there was no need to argue the matter on merit with respect to the quantum of amount of compensation.

17. In the facts and circumstances, when the reference application was time barred, it could not have been entertained by the Reference court. Consequently, the judgment and award of the reference court have to be treated to be illegal and erroneous and hence they deserve to be set aside. We find substantial force of law and facts in the arguments of the learned AGP for the appellants on this point. In other words, this appeal is required to be allowed only on the point of limitation. We, therefore, do not touch other factual aspects touching the quantum of amount of compensation as per the request of the learned Advocate for the parties M/s.Dave & Dave.

18. In the aforesaid view of the matter, this appeal is allowed. The impugned judgment and award of the reference court in the aforesaid LAR case is set aside. The application of the respondent for reference under section 18 of the Act is ordered to be dismissed. In other words, the LAR case is ordered to be dismissed. In case any additional amount has been paid to the respondent, he shall refund the said amount to the appellants and the appellants will be at liberty to recover the same from the respondent. Considering the facts and circumstances of the case, there shall be no order as to costs in this appeal. The party shall bear their own costs in this court as well as in the reference court. Office to draw decree accordingly.

[M H Kadri, J.]

Date:9.2.2001
msp [D P Buch, J.]